

2010 WL 5177367 (Miss.) (Appellate Brief)
Supreme Court of Mississippi.

Ceasar OLIVE, Appellant,
v.
Willie B. MCNEAL and Bernice O. Bouldin, Appellees.

No. 2009-CA-01095.
January 29, 2010.

Appeal from the Chancery Court of Madison County, Mississippi

Appellant Brief

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ORAL ARGUMENT REQUESTED

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***iii STATEMENT OF ISSUES PRESENTED**

1. THE CHANCERY COURT ERRED IN NOT FINDING A PRIMA FACIE CASE OF CONFIDENTIAL RELATIONSHIP AND IN NOT REQUIRING THE APPELLEES TO ESTABLISH THAT APPELLEES ACTED WITH THE UTMOST GOOD FAITH, THAT APPELLANT HAD FULLY ACKNOWLEDGED HIS ACTIONS AND CONSEQUENCES AND THAT APPELLANT ACTED WITH HIS OWN INDEPENDENT CONSENT AND ACTION.

2. THE CHANCERY COURT ERRED IN DENYING CEASAR OLIVE'S REQUEST FOR RELIEF UNDER THE BASIS OF MUTUAL MISTAKE

****iv STATEMENT OF THE CASE***

A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

The Appellant, Caesar Olive, is the owner of a tract of land located in Madison County, Mississippi. The Appellees, Willie McNeal and Bernice Bouldin, are the Appellant's step-son and step-daughter, respectively. This action arose out of a disputed transaction allegedly conveying a tract of land owned by Mr. Olive to Willie McNeal and Bernice Bouldin.

The Appellant, Mr. Olive, was approximately 77 years old at the time this dispute arose in 2003. Shortly before the transaction took place, the Appellant was involved in an accident in which he suffered [head trauma](#) and was hospitalized for a period of time. Not long after being released from the hospital the Appellant was involved in a car accident that rendered him unconscious. He was again hospitalized for a period of time. Prior to and after these hospitalizations, Caesar Olive was dependant upon Willie McNeal to take care of him to some degree. Willie McNeal took care of the Appellant's home and regularly drove the Appellant to doctor appointments. Both before and after the illnesses, Caesar Olive had come to trust Willie McNeal both as a caretaker and with some of his personal affairs.

At some point after these hospitalizations in 2003, Caesar Olive asked Willie McNeal to go to the Appellant's attorney, Patrick Rand, and have Mr. Rand draw up a "will" for the Appellant. Rather than asking Mr. Rand to draft a will, the Appellee asked Mr. Rand to draft a deed conveying the Appellant's land to the Appellees. At the suggestion of Mr. Rand, Willie McNeal agreed to allow the Appellant to retain a life estate in the property. After both the deed and affidavit reserving the life estate in the property were drafted, Willie McNeal drove Mr. Olive to the Madison County Chancery Clerk's office. Mr. McNeal did not attempt to explain the documents to the Appellant, but instead simply directed him as to where he needed to sign. *v At the time these documents were executed, Mr. McNeal believed the deed and affidavit could be changed by the Appellant as long as Appellant was living. The documents were notarized and filed for recording. At no time before or after the deed was drafted did the Appellant have the opportunity to seek independent advice from an attorney or an independent party regarding the document drafted, because it was his belief that he had signed a will.

Notably, no monetary consideration was paid by Appellees Willie McNeal or Bernice Bouldin to Caesar Olive in exchange for the property conveyed. The only reference to any type of consideration is contained in the Affidavit wherein it references Mr. Olive's desire to convey the property to the Appellees for the reason that they helped him farm the property during the time the Appellant owned it.

The Appellant believed he had signed a will at the time he signed the deed, as well as in the months following. It was not until the Appellant told his biological daughter, Betty Rugley, to see Mr. Rand (approximately one month later) and have herself added to the will that he realized he had signed a deed conveying his property to Appellees Willie McNeal and Bernice Bouldin. At that time, Mr. Olive attempted to contact the Appellees in order to correct the document, however, Appellees were uncooperative.

The Appellant filed this current action to set aside the deed on the basis of undue influence on the part of the Appellees. Furthermore, Appellant requested the deed be set aside on the basis of mutual mistake given both parties misunderstanding of the others' intentions as well as the legal instruments necessary to accomplish same.

On September 27, 2004, Appellant instituted an action in the Chancery Court of Madison County, Mississippi, against the Appellees. (RV1 at 1-7). Appellees filed their answer and defenses (RV1 at 12-16), and subsequently, on October 13, 2006, Appellant filed his Motion for Summary Judgment. (RV1 at 21-61). In response to Appellant's Motion for Summary Judgment, *vi Appellees filed their Response to the Motion for Summary Judgment on February 21, 2007. Together with Appellant's Motion for Summary Judgment, Appellant submitted the sworn deposition testimony of Caesar Olive and Willie McNeal, which set out the undisputed fact that a confidential relationship existed between Caesar Olive and Willie McNeal. Further, because a confidential relationship existed between the Mr. Olive and Mr. McNeal, there was a presumption of undue influence on the part of the Appellees.

On November 25, 2008, the Chancery Court entertained arguments of counsel with respect to Appellant's Motion for Summary Judgment. Subsequently, on December 4, 2008, an Order was entered into by the Chancery Court of Madison County which denied Appellant's Motion for Summary Judgment. (RV1 at 122).

On May 11, 2009, the Chancery Court held an evidentiary hearing on Appellant's claims against the Appellees and entertained arguments of counsel. Subsequently, on June 2, 2009, an Order was entered into by the Chancery Court of Madison County which denied Appellant's request for relief. (RV1 at 125).

Appellant filed his Notice of Appeal in this cause on July 2, 2009. Therefore, this matter is timely before the Court.

B. STATEMENT OF THE FACTS

The Appellant, Caesar Olive, is the owner of a tract of land located in Madison County, Mississippi. The Appellees, Willie McNeal and Bernice Bouldin, are the Appellant's step-son and step-daughter, respectively. (RV2 at 5). Willie McNeal had known Mr. Olive for sixty-two (62) years. (RV2 at 5). The Appellant, Mr. Olive, was approximately 77 years old at the time this dispute arose in 2003. (RV2 at 6). Shortly before the transaction took place, the Appellant was involved in an accident in which he suffered [head trauma](#) and was hospitalized for a period of time. (RV2 at 6 and 13). Not long after being released from the hospital the Appellant *vii was involved in a car accident that rendered him unconscious. (RV2 at 6 and 13). He was again hospitalized for a period of time. Prior to and after these hospitalizations, Caesar Olive was dependant upon Willie McNeal to take care of him to some degree. (RV2 at 7). Further, Mr. Olive had difficulty hearing, was physically weak and could not read well, and Mr. McNeal had full knowledge of this fact. (RV2 at 14 and 43). Willie McNeal took care of the Appellant's home and regularly drove the Appellant to doctor appointments. Both before and after the illnesses, Caesar Olive had come to trust Willie McNeal both as a caretaker and with some of his personal affairs. (RV2 at 6, 7 and 13). In fact, Mr. Olive trusted Willie McNeal more than a son and placed an incredible amount of trust in him to handle most all of his affairs. (RV2 at 6).

At some point after these hospitalizations in 2003, Caesar Olive asked Willie McNeal to go to the Appellant's attorney, Patrick Rand, and have Mr. Rand draw up a "will" for the Appellant. (RV2 at 7, 43 and 44). This action by Mr. McNeal took place immediately after the hospitalizations and Mr. McNeal's own attorney advised Mr. McNeal to see if Mr. Olive was competent to sign any documents (RV2 at 7 and 32). However, rather than following his own attorney's advice and without Mr. Olive's consent or knowledge, the Appellee asked Mr. Rand, on his own and without Mr. Olive being present, to draft a deed conveying the Appellant's land to the Appellees. (RV2 at 9). At the suggestion of Mr. Rand, Willie McNeal agreed to allow the Appellant to retain a life estate in the property. After both the deed and affidavit reserving the life estate in the property were drafted, Willie McNeal drove Mr. Olive to the Madison County Chancery Clerk's office. (RV2 at 9). Mr. McNeal did not attempt to explain the documents to the Appellant, but instead simply directed him as to where he needed to sign. (RV2 at 10 and 15). In fact, Mr. McNeal did not even understand what these documents that Mr. Olive was signing did or what their effect would be to Mr. Olive. (RV2 at 10 and 11). Mr. McNeal testified he was completely "ignorant" of the instruments he had Mr. Olive sign at the chancery Clerk's *viii office. (RV2 at 11 and 34). At the time these documents were executed, Mr. McNeal believed the deed and affidavit could be changed by the Appellant as long as Appellant was living. (RV2 at 10 and 11). The documents were notarized and filed for recording without Mr. Olive receiving any form of independent advice, counsel or explanation. (RV2 at 10, 12, 13 and 34). At no time before or after the deed was drafted did the Appellant have the opportunity to seek

independent advice from an attorney or an independent party regarding the document drafted by Mr. McNeal, because it was his belief that he had signed a will. (RV2 at 10, 12 and 13).

Notably, no monetary consideration was paid by Appellees, Willie McNeal or Bernice Bouldin to Caesar Olive in exchange for the property conveyed. (RV2 at 15). The only reference to any type of consideration is contained in the Affidavit wherein it references Mr. Olive's desire to convey the property to the Appellees for the reason that they helped him farm the property during the time the Appellant owned it, and of course said document was prepared at Mr. McNeal's request without any explanation to Mr. Olive as described herein above.

The Appellant believed he had signed a will at the time he signed the deed, as well as in the months following. (RV2 at 41) It was not until the Appellant told his biological daughter, Betty Rugley, to see Mr. Rand (approximately one month later) and have herself added to the will that he realized he had signed a deed conveying his property to Appellees, Willie McNeal and Bernice Bouldin. (RV2 at 44). At that time, Mr. Olive attempted to contact the Appellees in order to correct the document, however, Appellees were uncooperative.

***ix SUMMARY OF THE ARGUMENT**

The undisputed facts clearly show that the Appellees exercised undue influence in having the Appellant sign the deed conveying his land to the Appellees. As clearly noted in sworn testimony, there is no question that Caesar Olive and Willie McNeal maintained a confidential relationship. Furthermore, it is undisputed that the Appellant believed the document he signed was a will. The Appellant asked the Appellee to have a will drafted by an attorney, therefore, since Appellant trusted Appellee to fulfill such obligation, Appellant had no reason to believe the document was something other than a will, as requested. In failing to disclose to Mr. Olive that the document signed was in fact not a will, Mr. McNeal clearly **neglected** to act in good faith. Further, Mr. Olive was unable to seek independent advice regarding the legal ramifications of executing the deed. At the time of his request to Mr. McNeal to have a will drafted, Mr. Olive was ill due to his involvement in two (2) separate accidents, in which one accident caused Mr. Olive to suffer **head trauma** and become hospitalized and the second accident rendered him unconscious. Mr. Olive, at the time he signed the deed, had no reason to question Mr. McNeal's intentions or even believe Mr. McNeal would have a deed drafted instead of a Will. Mr. Olive was not in his right state of mind at the time he signed said deed and was not fully aware of what he was signing.

The undisputed facts further indicate that both the Appellant and Appellee had a different understanding of what the other wished to accomplish under the law. Clearly the intent of Mr. Olive was to create a will, and the Appellee, either intentionally or unintentionally, requested an attorney to draft a deed. There was a misunderstanding and mutual mistake between the parties as to what each wished to accomplish.

***1 ARGUMENT**

A. THE CHANCERY COURT ERRED IN NOT FINDING A PRIMA FACIE CASE OF CONFIDENTIAL RELATIONSHIP AND IN NOT REQUIRING THE APPELLEES TO ESTABLISH THAT APPELLEES ACTED WITH THE UTMOST GOOD FAITH, THAT APPELLANT HAD FULLY ACKNOWLEDGED HIS ACTIONS AND CONSEQUENCES AND THAT APPELLANT ACTED WITH HIS OWN INDEPENDENT CONSENT AND ACTION.

The law in Mississippi is clear that where a confidential relationship exists between a grantor and grantee, the grantee has the burden of showing there has been no abuse of that relationship. *Murray v. Laird*, 446 So.2d 575 (Miss. 1984). A confidential relationship between a grantor and grantee exists where there is confidence reposed on one side, and a superiority and influence on the other. *Minor v. Bertasi*, 530 So.2d 168, 170 (Miss. 1988). "Whenever there is a relation between two people in which one person is in a position to exercise a dominant influence upon the former, arising either from weakness of mind or body,

or through trust, the law does not hesitate to characterize such a relationship as fiduciary in character,” [Hendricks v. James](#), 421 So.2d 1031, 1041 (Miss. 1982).

Where a confidential relationship exists, and the grantee is active and influential in the transfer, there is a presumption that the conveyance was the product of undue influence. Once this confidential relationship is established, the grantee must prove by “clear and convincing” evidence that the grantee (1) acted with the utmost good faith, (2) the grantor had fully acknowledged and deliberated his or her actions and their consequences, and (3) that the grantor acted with his own independent consent and action. [Mullins v. Ratcliff](#), 515 So.2d 1183, 1193 (Miss. 1987). In considering whether the grantor acted with his own independent consent and action, factors to be considered may include whether the grantor sought advice of a competent person disconnected from the grantee acting wholly in the grantor's interest. *2 [Ratcliff](#), 515 So.2d at 1193.

In the present case, it is undisputed that a confidential relationship existed between Caesar Olive and Willie McNeal. The sworn testimony established the unusually high degree of trust bestowed upon Willie McNeal. Caesar Olive clearly trusted the Mr. McNeal as evidenced by the Caesar Olive's willingness to trust him with a large sum of money while he was hospitalized and his dependence upon Mr. McNeal for household and medical care. Additionally, Mr. Olive demonstrates an extraordinary level of confidence in Willie McNeal by giving him the authority to act on the Caesar Olive's behalf in requesting that an attorney “draw up” a will. This level of trust clearly puts the Appellees in a position to exercise dominant influence.

Immediately prior to the time the subject deed and affidavit were drafted, Caesar Olive had suffered two debilitating accidents which required Willie McNeal to assist him in certain daily activities such as driving him to doctor appointments and keeping his home clean. Caesar Olive's level of trust and confidence as well as his dependence upon Willie McNeal clearly demonstrates that a confidential relationship existed between the Caesar Olive and Appellees.

Because a confidential relationship exists between Caesar Olive and Mr. McNeal, there is a presumption of undue influence on the part of the Defendant. “[T]he existence of a confidential or fiduciary relationship, coupled with a showing of ‘suspicious circumstances’ such as the fact that a beneficiary or person who benefits by the will took part in the execution or preparation of the will, gives rise to a presumption of undue influence.” [In re Will Carter v. Moody](#), 948 So.2d 455, 458 (Miss. Ct. App. 2007)(quoting [Estate of Lawler v. Weston](#), 451 So.2d 739, 741 (Miss. 1984)). Because in the present case Mr. McNeal was a direct beneficiary, actively participated in the preparation and execution of the documents, and had full knowledge of the medical infirmities of Caesar Olive prior to and at the time of the documents' execution *3 (i.e. “suspicious circumstances”), the burden is therefore upon the Appellees, as the beneficiaries of the land conveyed, to prove by clear and convincing evidence the three factors discussed above. The Chancery Court below wholly failed to shift the burden of proof to the Appellees as required.

In the present case it is impossible for the Appellees to establish that they acted with the utmost good faith, that Caesar Olive fully acknowledged and deliberated his actions and their consequences, and that Caesar Olive acted with his own independent consent and action at the time of the conveyance. Rather, the evidence presented to the Chancery Court below clearly establishes that the Appellees took advantage of an **elderly** man and of his trusting nature to their own advantage.

The evidence presented concerning any good faith on the part of the Appellees was unquestionably non-existent during the proceedings in the Chancery Court below. Certainly if Appellees had been acting in good faith, they would have complied with the Caesar Olive's wishes to have the “will” drawn up and would have had some understanding of the documents they **HAD** Caesar Olive sign. Mr. McNeal admits that he was “ignorant” of what the documents were or what their execution would have upon Caesar Olive. Simply put, there was no good faith on the part of the Appellees.

The second element the Chancery Court below failed to require the Appellees to establish was that Caesar Olive had full knowledge and deliberation of his actions and their consequences. Again, the testimony of Mr. McNeal, who was a direct beneficiary, actively participated in having the documents prepared and executed, and who was a primary caregiver to the **elderly** and traumatized Caesar Olive, was himself “ignorant” of the documents and their consequences; therefore, this element

could not and can not be established. As his testimony illustrates, there is *4 no question that both Mr. Olive and Mr. McNeal believed Mr. Olive was executing a will and not a deed.

The third element that the Chancery Court below failed to require the Appellees to establish was that Caesar Olive exhibited independent consent and action in executing the deed. Again, this element was not and can not be demonstrated by the Appellees. Caesar Olive never consulted with anyone other than Mr. McNeal regarding the documents he executed. Therefore the only advice Caesar Olive could have possibly received with respect to the deed or affidavit came from a beneficiary who himself was “ignorant” of the documents. Furthermore, Mr. McNeal carried Caesar Olive to the Chancery Clerk's Office to have the documents executed, and Mr. McNeal only showed Caesar Olive where to sign and was unable to explain that the contents of what he was signing was something other than what the Caesar Olive believed it to be. Even if Mr. McNeal was not “ignorant” of the documents contents or effect and had offered advice or explanation regarding the documents, a clear conflict of interest existed due to his status as a beneficiary. The Appellees could not and can not satisfy their burden by clear and convincing evidence; accordingly, the deed must be set aside.

Appellant in the present case has made a specific showing of a confidential relationship, undue influence and “suspicious circumstances.” Appellant asserted a well-supported claim that the transaction resulted from the sort of trust and overwhelming power that requires the voiding of any contract.

B. THE CHANCERY COURT ERRED IN DENYING CEASAR OLIVE'S REQUEST FOR RELIEF UNDER THE BASIS OF MUTUAL MISTAKE.

“The law permits reformation of instruments to reflect the true intention of the parties when the erroneous part of the contract is shown to have occurred by a mutual mistake, i.e., the party seeking relief is able to establish to the court's satisfaction that both parties intended *5 something other than what is reflected in the instrument in question” [McCoy v. McCoy, 611 So. 2d 957, 961 \(Miss. 1992\)](#).

In the present case the testimony of both Caesar Olive and Willie McNeal clearly demonstrate that the parties did not share a mutual understanding, or any understanding, of what documents were being executed, what their legal effect were, or what they wished to accomplish legally through the instruments in question. Caesar Olive believed that he was having a will drafted. Caesar Olive believed the documents he was signed was a will. Caesar Olive did not know or understand that documents he was instructed by Mr. McNeal, a beneficiary of the documents, were a real estate deed or related to a real estate deed. And the Appellee was “ignorant” of what the documents were or what their legal effect were.

The Appellee requested and was the only party who contacted or spoke to the attorney who drafted the subject documents. The Appellee's sworn testimony clearly establishes that he believed the documents executed could be changed by Caesar Olive during Caesar Olive's lifetime.

As indicated by the testimony, the parties shared a mutual misunderstanding of the others' intentions as well as the legal instruments necessary to accomplish same. Accordingly, the deed should be set aside on the basis of a mutual mistake, and the Chancery Court below erred by failing to set aside the subject deed on the basis of mutual mistake.

***6 CONCLUSION**

Based upon the foregoing, Appellant respectfully requests this Court to reverse the Order of the Chancery Court in all respects, instructing the Chancery Court of Madison County, Mississippi, to reinstate Caesar Olive's action in accordance with its instructions. Alternatively, Appellant requests this Court reverse the Order of the Chancery Court and render a Decision setting aside the Warranty Deed recorded in Book 1703 at Page 360 in the records of the Chancery Clerk of Madison County, Mississippi.

Appellant further requests all further relief, in law or equity, that the Court deems appropriate under the facts of this case.

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